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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,916	12/11/2001	Gholam-Reza Zadno-Azizi	VGEN.004A	7570

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EXAMINER

MILLER, CHERYL L

ART UNIT PAPER NUMBER

3738

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

Office Action Summary	Application No. 10/017,916	Applicant(s) ZADNO-AZIZI ET AL.	
	Examiner Cheryl Miller	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 8-10, 12-14 and 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>14</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4, 7, 9, 10</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

Some of the references listed on the third page of the information disclosure statement have been dashed (10/207,708 10/207,718 10/207,701 10/207,688 and 10/207,717). These references were dashed simply because they are also listed on the second page of the information disclosure statement, and have already been considered once.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 15, 17, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 15 and 17 positively claim a portion of the body. Claim 15 recites, "when the ciliary muscle is relaxed and the lens is in an unaccommodated state." Claim 17 recites, "reshaping the lens capsule". Positively claiming a portion of the body is non-statutory subject matter and should be corrected.

Claim 3 recites the limitation "first and second distending portions" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is suggested to change "first and second distending portions" to recite --first and second distending members--.

Claim 17 recites the limitation "said biasing members" in line 9. There is insufficient antecedent basis for this limitation in the claim.

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Claim 18 recites the limitation "the opposite side" in line 17. There is insufficient antecedent basis for this limitation in the claim. It is suggested to change "the opposite side" to recite --an opposite side--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-7, 11, and 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Green (USPN 6,558,420 B2). Referring to claims 1 and 2, Green discloses an accommodating intraocular lens (32) comprising an anterior portion (33) with a viewing element (34) having an optic with refractive power (col.4, lines 38-42), a posterior portion (35) comprised of a viewing element (37), wherein the two viewing elements move relative to one another along the optical axis (col.3, lines 15-17; col.5, lines 29-32, 39-41), and a distending portion comprising two distending members (40), each having a fixed end (44) attached to a portion and a free end (38, 41) sized to distend the lens capsule (col.5, lines 4-6).

Referring to claim 3, Green discloses first and second distending members arranged 180° apart (two or four, spaced equally apart in figure 3; col.4, lines 59-64).

Referring to claims 5 and 6, Green discloses an anterior biasing element, and a posterior biasing element (two biasing elements 40 interspaced between the two distending members 40,

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when four attachment components are present), the biasing elements joined at first and second apices (shown joined in figure 3), wherein the first distending member is located midway between the apices and the second distending member is arranged 180° away from the first distending member (when four 40's are present, two being distending and two being biasing apices, all are spaced 90° apart and staggered so that the distending members are 180° apart).

Referring to claim 7, Green discloses a free end of the distending member remaining a constant distance from the optical axis (movement of the viewing element only occurs in the optical axis, col.5, lines 29-32, therefore, the distance of the distending member will be constant).

Referring to claim 11, Green discloses an accommodating intraocular lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic with refractive power (col.4, lines 38-42), and a biasing element (40) connected to the viewing element (34), a posterior portion (35) comprised of a viewing element (37) and a biasing element (40), the biasing elements joined at first and second apices (shown in figure 3), and a distending member (40, when four are present) extending between the apices, wherein the viewing elements are movable relative to one another (col.5, lines 29-33, 39-41).

Referring to claim 15, Green discloses an accommodating lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic with refractive power (col.4, lines 38-42), a posterior portion (35) comprised of a viewing element (37), the viewing elements movable relative to one another (col.5, lines 29-33, 39-41), a distending portion comprised of a distending member (40) attached to a portion (33 or 35) and oriented to distend the lens capsule such that the distance between a posterior side of the posterior viewing element

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and an anterior side of the anterior viewing element along the optical axis is less than 3 mm when the ciliary muscle is relaxed and the lens is in an unaccommodated state (col.5, lines 55-57).

Referring to claim 16, Green discloses an accommodating lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic with refractive power (col.4, lines 38-42), a posterior portion (35) comprised of a viewing element (37), the viewing elements movable relative to one another (col.5, lines 29-33, 39-41), a distending portion comprised of a distending member (40) attached to one of the portions and oriented to distend the capsule, wherein separation of viewing elements is reduced in an unaccommodated state.

Referring to claim 17, Green discloses an accommodating lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic with refractive power (col.4, lines 38-42), a posterior portion (35) comprised of a viewing element (37), the viewing elements movable relative to one another (col.5, lines 29-33, 39-41), a distending member (40) attached to the posterior portion (35) and separate from the biasing members (adjacent 40's).

Referring to claim 18, Green discloses an accommodating lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic with refractive power (col.4, lines 38-42), and a biasing element (40) connected to the viewing element, a posterior portion (35) comprised of a viewing element (37) and a biasing element (40) connected to the viewing element (fig.3), the viewing elements movable relative to one another (col.5, lines 38-42) and the biasing elements (40) joined at first and second apices (junction shown in fig.3), and first and second distending members (adjacent 40's when four are present on each portion), attached to a portion and extending away from the optical axis, the first distending member

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located between apices on one side and the second distending member located between apices on the opposite side, wherein the viewing elements are relatively movable through a range of at least 1 mm (col.5, lines 54-57).

Claims 11, 15, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Sarfarazi (USPN 6,488,708 B2, cited by applicant in IDS). Referring to claim 11 (see figure 14 and respective portions of the specification), Sarfarazi discloses an accommodating intraocular lens comprising an anterior portion comprised of a viewing element (62) having an optic with refractive power, and a biasing element (68) connected to the viewing element, a posterior portion comprised of a viewing element (64) and a biasing element (68), the biasing elements (68) joined at first and second apices, and a distending member (70) extending between the apices, wherein the viewing elements are movable relative to one another.

Referring to claim 15 (see figure 15 and respective portions of the specification), Sarfarazi discloses an accommodating lens comprising an anterior portion comprised of a viewing element (74) having an optic with refractive power, a posterior portion comprised of a viewing element (76), the viewing elements movable relative to one another, a distending portion comprised of a distending member (72) attached to a portion and oriented to distend the lens capsule such that the distance between a posterior side of the posterior viewing element and an anterior side of the anterior viewing element along the optical axis is less than 3 mm when the ciliary muscle is relaxed and the lens is in an unaccommodated state (col.4, lines 15-20).

Referring to claim 16 (see figure 15 and respective portion of the specification), Sarfarazi discloses an accommodating lens comprising an anterior portion comprised of a viewing element (74) having an optic with refractive power, a posterior portion comprised of a viewing element

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(76), the viewing elements movable relative to one another, a distending portion comprised of a distending member (72) attached to one of the portions and oriented to distend the capsule, wherein separation of viewing elements is reduced in an unaccommodated state.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green (USPN 6,558,420 B2). Green discloses an accommodating intraocular lens (32) comprising an anterior portion (33) comprised of a viewing element (34) having an optic and a refractive power of less than 55 diopters (col.5, lines 64-67; col.2, lines 27-38), a posterior portion (35) comprised of a viewing element (37), the viewing elements movable relative to one another, and a distending portion comprised of a distending member (40) having a fixed end (44) attached to the posterior portion and a free end (38, 41) sized to distend a portion of the capsule. Green discloses the viewing element having a diameter of 4.5 mm to 9 mm in diameter instead of 3 mm as claimed, but does disclose modification of sizes (col.6, lines 33-48). It would have been an obvious matter of design choice to have a viewing element diameter of 3 mm or less, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green (USPN 6,558,420 B2) in view of Caldwell, Delmar R. et al. (USPN 4,932,968). Green discloses an accommodating intraocular lens (32) having distending members (40), however does not disclose the distending members having openings. Caldwell, Delmar teaches in the same field of accommodating intraocular lens (56), a lens having a distending member (64) with an opening (78) for the purpose of allowing ingrowth and attachment of surrounding tissue (fig.4; col.12, lines 44-50, 57-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Caldwell's teaching of ingrowth openings on distending members, with the lens and distending members of Green in order to provide an ingrowth region allowing better attachment to surrounding tissues.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (703) 305-2812. The examiner can normally be reached on Monday through Friday from 7:30am to 5:00pm.

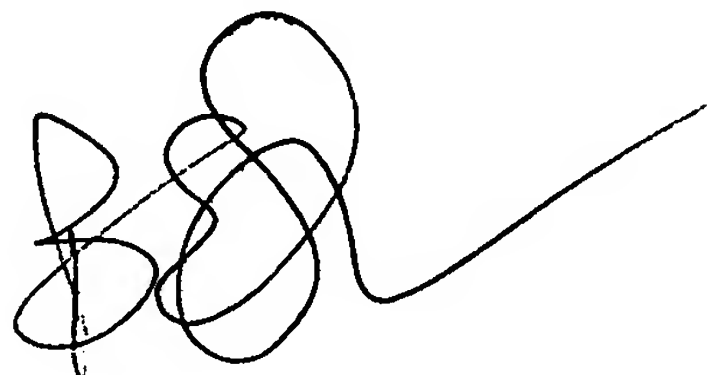
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Cheryl Miller

July 10, 2003



BRUCE SNOW
PRIMARY EXAMINER